

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

NICE SYSTEMS, INC. and NICE  
SYSTEMS LTD,

Plaintiffs,

v.

WITNESS SYSTEMS, INC.

Defendant.

Civil Action No. 06-311-JJF

**DEFENDANT WITNESS SYSTEMS, INC.'S SECOND AMENDED PROPOSED  
FORM OF SPECIAL JURY VERDICT**

FISH & RICHARDSON P.C.  
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FISH & RICHARDSON P.C.  
1180 Peachtree Street, N.E., 21st Floor  
Atlanta, GA 30309

**ATTORNEYS FOR DEFENDANT  
WITNESS SYSTEMS, INC.**

Dated: January 18, 2008

**SPECIAL JURY VERDICT**

We, the jury in the above-titled action, find the following special verdict on the questions submitted to us:

**INFRINGEMENT AND VALIDITY**

**THE '570 PATENT**

- 1) Has NICE proven by a preponderance of the evidence that Witness Systems infringed U.S. Patent No. 6,249,570?

Claim 6 YES \_\_\_\_\_ (For NICE) NO \_\_\_\_\_ (For Witness)

- 2) Has Witness proven by clear and convincing evidence that U.S. Patent No. 6,249,570 is invalid?

Claim 6 YES \_\_\_\_\_ (For Witness) NO \_\_\_\_\_ (For NICE)

**THE '371 PATENT**

- 3) Has NICE proven by a preponderance of the evidence that Witness Systems infringed U.S. Patent No. 5,396,371?

Claim 1 YES \_\_\_\_\_ (For NICE) NO \_\_\_\_\_ (For Witness)

Claim 8 YES \_\_\_\_\_ (For NICE) NO \_\_\_\_\_ (For Witness)

- 4) Has Witness proven by clear and convincing evidence that U.S. Patent No. 5,396,371 is invalid?

Claim 1 YES \_\_\_\_\_ (For Witness) NO \_\_\_\_\_ (For NICE)

Claim 8 YES \_\_\_\_\_ (For Witness) NO \_\_\_\_\_ (For NICE)

**THE '109 PATENT**

- 5) Has NICE proven by a preponderance of the evidence that Witness Systems infringed the U.S. Patent No. 7,010,109?

Claim 1 YES \_\_\_\_\_ (For NICE) NO \_\_\_\_\_ (For Witness)

Claim 6 YES \_\_\_\_\_ (For NICE) NO \_\_\_\_\_ (For Witness)

- 6) Has Witness proven by clear and convincing evidence that U.S. Patent No. 7,010,109 is invalid?

Claim 1 YES \_\_\_\_\_ (For Witness) NO \_\_\_\_\_ (For NICE)

Claim 6 YES \_\_\_\_\_ (For Witness) NO \_\_\_\_\_ (For NICE)

**THE '372 PATENT**

- 7) Has NICE proven by a preponderance of the evidence that Witness Systems infringed U.S. Patent No. 6,775,372?

Claim 1 YES \_\_\_\_\_ (For NICE) NO \_\_\_\_\_ (For Witness)

Claim 15 YES \_\_\_\_\_ (For NICE) NO \_\_\_\_\_ (For Witness)

Claim 33 YES \_\_\_\_\_ (For NICE) NO \_\_\_\_\_ (For Witness)

- 8) Has Witness proven by clear and convincing evidence that U.S. Patent No. 6,775,372 is invalid?

Claim 1 YES \_\_\_\_\_ (For Witness) NO \_\_\_\_\_ (For NICE)

Claim 15 YES \_\_\_\_\_ (For Witness) NO \_\_\_\_\_ (For NICE)

Claim 33 YES \_\_\_\_\_ (For Witness) NO \_\_\_\_\_ (For NICE)

**THE '920 PATENT**

- 9) Has NICE proven by a preponderance of the evidence that Witness Systems infringed U.S. Patent No. 6,870,920?

Claim 1 YES \_\_\_\_\_ (For NICE) NO \_\_\_\_\_ (For Witness)

Claim 16 YES \_\_\_\_\_ (For NICE) NO \_\_\_\_\_ (For Witness)

Claim 21 YES \_\_\_\_\_ (For NICE) NO \_\_\_\_\_ (For Witness)

- 10) Has Witness proven by clear and convincing evidence that U.S. Patent No. 6,870,920 is invalid?

Claim 1 YES \_\_\_\_\_ (For Witness) NO \_\_\_\_\_ (For NICE)

Claim 16 YES \_\_\_\_\_ (For Witness) NO \_\_\_\_\_ (For NICE)

Claim 21 YES \_\_\_\_\_ (For Witness) NO \_\_\_\_\_ (For NICE)

**IF YOU HAVE FOUND *NONE* OF THE PATENTS ABOVE TO BE BOTH INFRINGED AND NOT INVALID, PLEASE STOP HERE AND GO TO PAGE 6 TO SIGN YOUR VERDICT.**

**IF YOU HAVE FOUND ONE OR MORE OF THE PATENTS ABOVE TO BE BOTH INFRINGED AND NOT INVALID, PLEASE CONTINUE TO PAGE 4.**

**WILLFULNESS**

- 11) If you have found Witness Systems infringed a valid claim, do you find that NICE has proven by clear and convincing evidence that Witness Systems' infringement was willful?

YES \_\_\_\_\_ (For NICE) NO \_\_\_\_\_ (For Witness)

**DAMAGES**

12) What damages, if any, do you award NICE for infringement of each patent that you found to be both valid and infringed?

	Royalty Percent (%)	Royalty Amount (\$)
'570	_____	_____
'371	_____	_____
'109	_____	_____
'372	_____	_____
'920	_____	_____
TOTAL	_____	_____

We, the jurors, by signing below, indicate our unanimous verdict.

\_\_\_\_\_  
Jury Foreperson

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Juror

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Juror

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Juror

Dated: January 18, 2008

FISH & RICHARDSON P.C.

By: /s/William J. Marsden, Jr.

William J. Marsden, Jr. (#2247)

Kyle Wagner Compton (#4693)

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Attorneys for Defendant

Witness Systems, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18th day of January, 2008, I electronically filed with the Clerk of Court the foregoing Defendant Witness System Inc.'s Amended Proposed Form of Special Jury Verdict using CM/ECF which will send electronic notification of such filing(s) to the below-listed Delaware counsel. In addition, the filing will also be sent via hand delivery.

Josy W. Ingersoll Melanie K. Sharp Karen E. Keller Mary Dugan Young, Conaway, Stargatt & Taylor, LLP 1000 West Street, 17 <sup>th</sup> Floor P.O. Box 391 Wilmington, DE 19899	<i>Attorneys for Plaintiffs          Nice Systems Ltd. and Nice Systems, Inc.</i>
I also certify that on January 18, 2008, I have sent by electronic mail and U.S. First Class Mail, the document(s) to the following non-registered participants:	
Scott G. Lindvall Daniel DiNapoli Joseph M. Drayton Robert R. Laurenzi Kaye Scholer LLP 425 Park Avenue New York, NY 10022	<i>Attorneys for Plaintiffs          Nice Systems Ltd. and Nice Systems, Inc.</i>

/s/William J. Marsden, Jr.

William J. Marsden, Jr.